

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
EAGER BEAVER TREE SERVICE, INC.,

Plaintiff,

ANSWER

-against-

07 Civ. 10535(SCR)

TOWN OF LEWISBORO, New York,

Defendant.
-----X

For the answer to the complaint of the plaintiff in the above entitled case, defendant, Town of Lewisboro, by its attorneys, SANTANGELO RANDAZZO & MANGONE LLP, says:

NATURE OF THE ACTION

1. The allegations contained in paragraph "1" of the complaint constitute conclusions of law to which defendant makes no answer except to demand strict proof thereof and respectfully refers any and all questions of law to this Honorable Court. Further, defendant denies any conduct giving rise to a cause of action pursuant to enumerated statute.

JURISDICTION

2. The allegations contained in paragraph "2" of the complaint constitute conclusions of law to which defendant makes no answer except to demand strict proof thereof and respectfully refers any and all questions of law to this Honorable Court.

THE PARTIES

3. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "3" of plaintiff's complaint.

4. Defendant admits the allegations contained in paragraph "4" of the plaintiff's complaint.

THE FACTS

5. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph "5" of plaintiff's complaint and further states that the referenced letter speaks for itself.

6. Defendant denies the allegations contained in paragraph "6" of the plaintiff's complaint.

7. Defendant denies the allegations contained in paragraph "7" of the plaintiff's complaint.

ANSWERING A CLAIM

8. Defendant repeats, reiterates and realleges each and every answer contained in Paragraphs 1-7 of this Answer with the same force and effect as if set forth more fully at length herein.

9. Defendant denies the allegations contained in paragraph "9" of the plaintiff's complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. Any conduct which is alleged by plaintiff is *de minimis* and insubstantial and as such the allegations fail to establish a claim upon relief under 42 U.S.C. Section 1983.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

11. For a separate and distinct affirmative defense, the answering defendant alleges that the complaint on file herein fails to state a claim upon relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

12. For a separate and distinct affirmative defense, the answering defendant alleges that any harm which came to plaintiff was a direct and proximate result of plaintiff's own actions.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

13. That plaintiff's claim for damages, if any, are to be strictly governed by the Civil Rights Act of 1991 (42 U.S.C. Section 1981a).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

14. Plaintiff has failed to allege that any harm which they may have suffered occurred as a result of a policy and/or custom established by Town of Lewisboro, and thus the action against the Town must be dismissed.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

15. Insofar as plaintiff seeks to impose liability to defendant Town of Lewisboro simply because it is alleged to have employed one or more constitutional tortfeasors, this action should be dismissed since the doctrine of *respondeat superior* is not available in an action brought pursuant to 42 U.S.C. Section 1983.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

16. Plaintiff's speech was not a motivating or substantial factor in the defendant's decision.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

17. Defendant would have taken the same action irrespective of plaintiff's speech.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

18. Plaintiff's speech is not protected speech.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

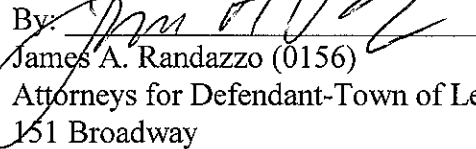
19. Plaintiff's speech did not address a matter of public concern.

W H E R E F O R E, the defendant prays judgment that the complaint of the plaintiff be dismissed, together with the costs and disbursements of this action and attorney's fees awarded to defendant.

Dated: Hawthorne, New York
December 12, 2007

Yours, etc.,

SANTANGELO RANDAZZO & MANGONE LLP

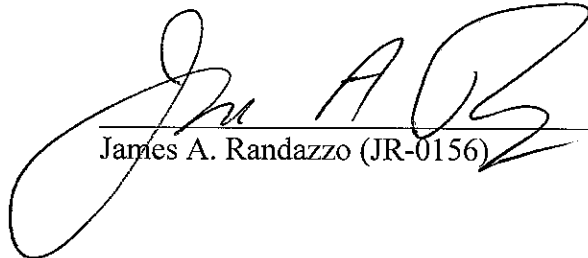
By: 
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TO: LOVETT & GOULD, LLP
Attorneys for Plaintiff
222 Bloomingdale Road
White Plains, New York 10605
(914) 428-8401

CERTIFICATE OF SERVICE

I, JAMES A. RANDAZZO, hereby certify that on December 12, 2007, I served the within ANSWER upon all parties, by Electronic Case Filing, the address as provided to defendant by notification from this Court:

TO: LOVETT & GOULD, LLP
Attorneys for Plaintiff
222 Bloomingdale Road
White Plains, New York 10605
(914) 428-8401


James A. Randazzo (JR-0156)